

January 8, 2021

Mr. Stephen Feinman
1023 Beach Rd.
Baltimore MD 21221

Re: Feinman Property, 1023 Beach Road 21221
Critical Area Administrative Variance
Tracking No. 07-20-3321

Dear Mr. Feinman:

The Department of Environmental Protection and Sustainability (EPS) has completed a review of the variance request for proposed development on the above referenced property. The 15,700 square foot property is located within a Limited Development Area in the Chesapeake Bay Critical Area. The request proposes to impact 2,102 square feet of the Critical Area buffer to construct a garage, recreational vehicle storage shed, and driveway and walk improvements. The continued use of dwelling, deck, and yard areas is also requested. The required buffer covers almost the entire property. A stream and associated non-tidal wetlands exist on or near the eastern property line. There is no existing forest or developed woodland on the site.

The Director of EPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.12.04. There are seven (7) criteria listed in COMAR 27.01.12.04 that shall be used to evaluate the variance request. All seven of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in an unwarranted hardship. With a stream and associated non-tidal wetlands on or near the eastern property line, the required Critical Area buffer covers the majority of the property. The applicant seeks continued use of the dwelling, deck, and yard areas with improvements that include a garage, recreational vehicle storage area, driveway, and walk. With removal of existing structures in the buffer and a reduction of lot coverage, the applicant proposes the improvements in line with the existing dwelling. Based on the plan, buffer impacts have been minimized when considering practical use of this environmentally constrained property. Literal enforcement of the regulations would not allow for any construction or the continued uses on this grandfathered property. Based on this, special conditions do exist that are peculiar to this site, and literal enforcement of the regulations would result in an unwarranted hardship. Therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the property owner of rights commonly enjoyed by other properties in similar areas within the Critical Area. Other residential property owners in the Critical Area with similar site constraints enjoy uses of their property like the uses proposed in this application. Literal enforcement of the regulations would deprive the owners from constructing the improvements, and from continued existing uses. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Impacts to the Critical Area buffer for the proposed development and continued existing uses on the referenced property would not be denied to similar properties with similar site constraints in the Critical Area. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances that are the result of actions by the applicant. The property owner has not started any construction of the proposed structures on the property. Therefore, the fourth criterion has been met.

The fifth criterion requires that the variance request does not arise from any conforming or nonconforming condition on any neighboring property. This variance request involves the redevelopment of an existing residential property. The request does not arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. Therefore, the fifth criterion has been met.

The sixth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area. The redevelopment of accessory structures on the property reduces lot coverage in the buffer with removal of a garage/shed structure closest to the stream/wetland area. All impacts have been located in line with the existing dwelling and deck. The buffer mitigation plantings proposed along the stream/wetland area on and near the eastern part of the property will improve water quality management. Therefore, the buffer impacts to allow for the proposed redevelopment and for the continued existing uses will result in minimal adverse impacts to plants or wildlife, and the sixth criterion can be met by meeting all or the majority of buffer mitigation requirements on the site.

The seventh criterion requires that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The majority of the site is within the Critical Area buffer. The applicant proposes continued existing use of the dwelling, deck, and yard areas, and the redevelopment of accessory structures on a property that was developed prior to the Critical Area law. Lot coverage is being reduced, redevelopment is proposed in line with the existing dwelling and deck, and buffer mitigation planting is proposed along the stream/wetland area. Because the redevelopment of the site reduces lot coverage, and includes the planting of native

trees and shrubs adjacent to the stream/wetland area, water quality management will improve on the site. Therefore, the redevelopment and continued uses proposed are in harmony with the general spirit and intent of the Critical Area regulations and the seventh criterion has been met.

Based upon our review, this Department finds that the above criteria have been met, or will be met through implementation of the conditions outlined below. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. The following note must appear on all plans associated with this project:

"On January 8, 2021, a variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Areas Protection to allow for impacts to the Critical Area buffer for construction of a garage, recreational vehicle storage shed, and driveway and walk improvements. The request also included continued existing uses of dwelling, deck, and yard areas. Conditions including meeting buffer mitigation requirements were placed on this variance to reduce water quality impacts. Any revisions to this proposal, or any new development involving impacts to the required buffer will require a new variance application for review."

2. The required mitigation for buffer impacts for this project is 3,876 square feet (3:1, 6,306 square feet minus lot coverage removed from the buffer, 2,430 square feet). The planting of native trees and shrubs within the Critical Area buffer shall be maximized to meet this requirement. If it is determined that all mitigation cannot be provided on-site, a fee-in-lieu of \$1.50/square foot made payable to Baltimore County would be required for the remainder. The buffer mitigation planting shall be completed prior to September 24, 2021 (See condition #3 below).
3. A Critical Area management plan outlining the proposed development, including the lot coverage requirements and the required buffer mitigation must be submitted to EPS for review. This plan must be approved prior to any permit approvals.
4. Upon approval of the Critical Area management plan by this Department, a security of no less than \$0.25 per square foot of planting area shall be submitted to Baltimore County with an Environmental Agreement. The security must be submitted prior to any permit approval. The plantings must meet a 100% survivability requirement for two years following the EPS approval of the initial planting.

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5. A Critical Area Easement must be recorded in Baltimore County Land Records along with the appropriate declaration of protective covenants, conditions, and restrictions. Recordation must be completed prior to permit approval.
6. Critical Area "Do Not Disturb" signs shall be installed at the locations shown on the approved Critical Area management plan. This requirement must be completed prior to permit approval.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until the applicable 30-day appeal period has elapsed pursuant to COMAR 27.01.12.07 C.

The property owner(s) must sign the statement at the end of this letter, and then return the signed letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Paul Dennis at 410-887-3980.

Sincerely yours,

David V. Lykens
Director

DVL: pad

Enclosures: Critical Area Buffer Assistance Guide, Lot Coverage Assistance Guide
Sign Specifications

c: John Canoles, Eco-Science Professionals Inc.
Susan Makhoulouf, Critical Area Commission

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Baltimore County Code Article 33. Environmental Protection And Sustainability, Title 2 Chesapeake Bay Critical Areas Protection.

Property Owner Signature(s)	Property Owner Printed Name(s)	Date
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